

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Josef Kirk Fischl

Plaintiff,

vs.

Correction Officer J. Fruitsma

Correction Officer Rozell

Correction Officer Timothy Brockway

Correction Officer Jeremy Burch

Correction Officer Eric Mead

Correction Officer Ray Tilley

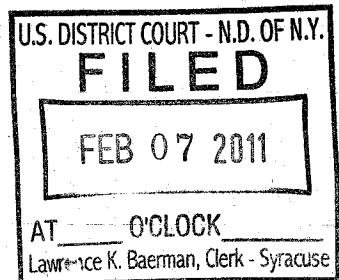
Correction Officer Donald Smith

Correction Sergeant R. Wladyka

Defendants.

} INMATE
} CIVIL RIGHTS
} COMPLAINT PUR-
} SUANT TO 42 U.S.
} C.G 1983

Case No. 9: 11cv134



Plaintiff demands a trial by: Jury Court

Plaintiff in the above captioned action, alleges

as follows:

as follows:

JURISDICTION

1. This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) and 2201.

PARTIES

2. Plaintiff: Josef Kirk Fischl

Address: Five Points Correctional Facility

State Route 96-P.O. Box 119-Romulus, N.Y. 14541

3. a. Defendant: J. Pruijssma

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51- Comstock, N.Y. 12821

b. Defendant: ? Rozell

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51- Comstock, N.Y. 12821

c. Defendant: Timothy Brockway

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51- Comstock, N.Y. 12821

d. Defendant: Jeremy Burch

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51 - Comstock, N.Y. 12821

e. Defendant: Eric Mead

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51 - Comstock, N.Y. 12821

f. Defendant: Ray Tilley

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51 - Comstock, N.Y. 12821

g. Defendant: Donald Smith

Official Position: Correction Officer

Address: Great Meadow Correctional Facility

P.O. Box 51 - Comstock, N.Y. 12821

h. Defendant: R. Vladyka

Official Position: Correction Sergeant

Address: Great Meadow Correctional Facility

P.O. Box 51 - Comstock, N.Y. 12821

All defendant's described herein are sued in their individual capacities. At all times relevant to the events described herein, defendants were employed and acting under color of law of the State of New York.

4. PLACE OF PRESENT CONFINEMENT

a. Is there a prisoner grievance procedure at this facility? Yes - No

b. If your answer to 4a is YES, did you present the facts relating to your com-

plaint in this grievance program? X Yes — No

If your answer to 4b is YES,

(i) What steps did you take? I filed my

grievance to the Inmate Grievance Resolution Committee at Green Haven Correctional

Facility on May 5th, 2008 for 2 incidents of

excessive use of force by Corrections Officers at Great Meadow Correctional Facility

on March 5th & 6th 2008, such as, I was trans-

ferred to Central New York Psychiatric Center

on March 12th, 2008, then to Green Haven Cor-

rectional Facility on April 16th, 2008, and was un-

able to file said grievance at Great Meadow

due to being transferred. My grievance was

denied at Green Haven. I then appealed my grievance to the Superintendent at Green Haven. My grievance was denied. I then appealed to the Central Office Review Committee in Albany.

(ii) What was the final result of your grievance?

My grievance was denied by the Central Off-

ice Review Committee on October 8th, 2008,

thereby fully exhausting my administrative remedies.

If your answer to 4b is NO - why did you

choose to not present the facts relating to

your complaint in the prison's grievance program?

Not applicable.

c. If there is no grievance procedure in your

institution, did you complain to prison authorities

about the facts alleged in your complaint?

Yes No Not applicable.

If your answer to 4c is YES,

(i) What steps did you take? Not applicable

(ii) What was the final result regarding your complaint? Not applicable.

If your answer to 4c is NO - why did you choose to not complain about the facts relating to your complaint in such prison? Not applicable.

5. PREVIOUS LAWSUITS

a. Have you ever filed any other lawsuits in any state and federal court relating to your imprisonment? Yes No

b. If your answer to 5a is YES, you must describe any and all lawsuits, currently pending or closed, in the space provided below.

For EACH lawsuit, provide the following information:

i. Parties to previous lawsuit:

Plaintiff: Joseph Kirk Fischl

Defendant: The State of New York

ii. Court (if federal court, name District; if state

court, name County): County of Erie

iii. Docket number: Claim No. 111211-ORI# NY 001805J

iv. Name of Judge to whom case was assigned:

Richard T. Sise

v. Disposition (dismissed? on appeal? currently pending?):

dismissed

vi. Approximate date of filing prior lawsuit: July 22, 2005

2005

vii. Approximate date of disposition: unknown

i. Parties to previous lawsuit:

Plaintiff: Josef Kirk Fischl

Defendant(s): Correction Sergeant David Armitage

and Correction Officer J.A. Marshall

ii. Court (if federal court, name District; if state

court, name County): Northern District of New York

iii. Docket number: 92-CV-1327

iv. Name of Judge to whom case was assigned:

Magistrate Judge Scanlon

v. Disposition (dismissed? on appeal? currently pending?):

Settlement

vi. Approximate date of filing prior lawsuit:

September 29th, 1992

vii. Approximate date of disposition: January 25th, 2001

i. Parties to previous lawsuit:

Plaintiff: Josef Kirk Fischl

Defendant(s): The State of New York

ii. Court (if federal court, name District; if state

court, name County): Erie County

iii. Docket number: unknown

iv. Name of Judge to whom case was assign-

ed: Judge Philip Patti

v. Disposition (dismissed? on appeal? currently pend-

ing?); awarded damages after trial

vi. Approximate date of filing prior lawsuit:

2002

vii. Approximate date of disposition:

2007

i. Parties to previous lawsuit:

Plaintiff: Josef Kirk Fischl

Defendant(s): Correction Officer Nicholas Brzeznak

Correction Officer Robert J. Domzalski

Correction Officer T. Bartel

Correction Officer Rudy Richter

Correction Sergeant Joseph W. Vittkuhn

Correction Sergeant? Lucas

Registered Nurse Judith Derman

Correction Officer David Haubinger

Correction Officer J. Rynkevics

Correction Officer Michael Overhoff

Correction Sergeant P. Romietkoz

Commissioner's Hearing Officer Thomas J. Scheelkopf

Correction Lieutenant? Wynkoop

Deputy Superintendent of Administration Sean Schumacher

Correction Captain Michael Kearney

ii. Court (if federal court, name District; if state

court, name County): Western District of New York

iii. Wocket number: 05-CV-0700A(F)

iv. Name of Judge to whom case was assigned:

Magistrate Judge Leslie F. Porschis

v. Disposition (dismissed? on appeal? currently pending?)

Settlement

vi. Approximate date of filing prior lawsuit:

October 2, 2005

vii. Approximate date of disposition: November 2, 2009

i. Parties to previous lawsuit:

Plaintiff: Josef Kirk Fischl

Defendant: The State of New York

ii. Court (if federal court, name District; if state court, name County): Washington County

iii. Docket number: unknown

iv. Name of Judge to whom case was assigned: unknown

v. Disposition (dismissed? on appeal? currently pending?): dismissed

vi. Approximate date of filing prior lawsuit:

April 3 1990

vii. Approximate date of disposition: unknown

i. Parties to previous lawsuit:

Plaintiff: Josef Kirk Fischl

Defendants: The State of New York

ii. Court (if federal court, name District; if state

court, name County): Erie County

iii. Docket number: unknown

iv. Name of Judge to whom case was assigned:

unknown

v. Disposition (dismissed? on appeal? currently pend-

ing?): dismissed

vi. Approximate date of filing prior lawsuit:

2001

vii. Approximate date of disposition: unknown

b.

FACTS

1. This complaint is for excessive use of force by corrections officers in violation of Plaintiff's Eighth Amendment Rights of the United States Constitution, therefore the U.S. District Court has jurisdiction over this matter, and the Northern District is the proper venue, such as, the violation's of Plaintiff's constitutional rights occurred in Great Meadow Correctional Facility in Washington County.

2. On March 5th, 2008, Plaintiff was housing at

Great Meadow Correctional Facility in A-block-

6 Company 34 cell.

3. Defendant Correction Officer J. Pruijksma

was the 6 company officer on March 5th, 2008.

4. On the morning of March 5th, 2008, Plaintiff

proceeded to the messhall for his morning

meal—the company being escorted by Def-

endant Correction Officer J. Pruijksma.

5. Before entering the messhall, Plaintiff was

stopped and questioned by the messhall Sergeant,

such as, the Sergeant noticed Plaintiff was

wearing 1 boot and 1 sneaker.

6. Plaintiff has a signed affidavit of a fellow

prisoner who witnessed a conversation between

Defendant Correction Officer J. Pruijksma and

another messhall officer.

7. As witnessed by Eugene Adger - 93-A-3377,

an officer behind the messhall counter said

to Defendant Correction Officer J. Pruijks-

ma, "What's up with that"? The officer

was curious as to why Plaintiff was wear-

ing 1 boot and 1 sneaker.

8. Defendant Correction Officer J. Pruijksma

replied, "He's acting crazy. Watch when we

get back to the block. We're gonna beat

the shit out of him."

9. As witnessed by fellow prisoner Eugene

Adger, this statement by Defendant Cor-

rection Officer J. Pruijksma - who's nick-

name is "Spike" - clearly shows a premeditated plot to do Plaintiff bodily harm.

10. Plaintiff was unaware of Defendant Correction Officer J. Pruijksma's plan to do him harm, such as, he did not hear Pruijksma's conversation.

11. After eating breakfast, Plaintiff left the messhall and proceeded to his a.m. program - Transitional Services II.

12. Plaintiff was directed back to his housing unit - A-6-34, assuming his program was closed.

13. Plaintiff never made it back to his cell, such as, he was stopped by Defendant

Correction Officer's J. Pruijksma and Rozell

in the A-B stairwell at approximately 8:50 am.

14. Defendant Correction Officer Rozell asked

Plaintiff, "What are you doing?", as he gazed

at Plaintiff's different footwear. Rozell then

told Plaintiff to put his hands on the

wall for a pat frisk.

15. When Plaintiff put his hands on the wall,

a violent, unprovoked attack, assault & battery

commenced against Plaintiff. Plaintiff never

struck either of these 2 defendant's.

16. Both Defendant Correction Officer's J. Pruijksma and Rozell repeatedly punched Plaintiff

with their fists, causing bodily injury, and

then threw him to the floor.

17. Once Plaintiff was on the floor, Defendant Correction Officer's J. Bruikmans and Rozell repeatedly kicked Plaintiff, causing additional bodily harm.

18. After being repeatedly assaulted for approximately 5 minutes for no reason whatsoever, Plaintiff was handcuffed and taken to the facility hospital where he was examined by a nurse and then photographed.

19. Plaintiff was then again handcuffed and escorted to S.H.U. - B-1-36 cell, in where he was not given any food at all.

20. At approximately 11:13 a.m. on March 6th, 2008,

a gas-masked man - Defendant Correction Officer Timothy Brockway, sprayed a chemical agent at Plaintiff in his cell. Plaintiff was sprayed with chemical agents 5 times over a 15 minute period, causing him to choke and his eyes to tear.

21. At approximately 11:30 a.m. on March 6th, 2008,

Plaintiff's cell opened, and Defendant Correction Officer Jeremy Burch stormed in and slammed against Plaintiff with a plastic cell shield apparatus.

22. Followed by Defendant Burch, were Defendant

Correction Officer's Ray Tilley, Eric

Mead, and Donald Smith, who were all in

B-1-36 cell along with Plaintiff at the same time.

23. All four of these Defendant Correction

Officers repeatedly beat Plaintiff with

Their fists for approximately 10 minutes,

causing severe bodily harm to Plaintiff as

he defended himself.

24. This brutal attack upon Plaintiff was

completely unprovoked and unwarranted, and

was done solely to cause Plaintiff extreme

bodily harm.

25. Defendant Correction Sergeant R. Vladyka-

The area supervisor- authorized, observed, allowed

and condoned this brutal beating upon Plain-

tiff and did nothing to intervene and prevent this extreme physical abuse.

26. Plaintiff was eventually handcuffed, shackled, and then run "like a run away freight train" all the way from S.H.U. - B-1-36 to the Mental Health Unit - Observation - (M.H.U.-O.B.S.)

27. While Plaintiff was run to M.H.U.-O.B.S. he was also run into walls.

28. It was difficult for Plaintiff to keep his feet up and moving with the pace of the escorting officers, who were Defendant Correction Officer's Burch, Smith, and Tilley, due to Plaintiff being shackled, with the shackles cutting into his ankles.

29. Plaintiff's ankles were bleeding and he has permanent scars on both due to the shackles being tightly applied, and the scary, traumatic, run/trip from S.H.U. to M.H.U.-O.B.S.

30. Photographs were again taken of Plaintiff's numerous, Correction Officer inflicted injuries, in M.H.U.- O.B.S. and Plaintiff was given a shower.

31. Plaintiff never received any medical attention for his numerous injuries which included: contusions all over his head, 2 black eyes, splitting up blood, lacerations on left eyebrow and corner of mouth, trauma to wrists and ankles- bleeding from handcuffs and shackles, trauma

to both shoulders, nerve damage and numbness to right ring and pinky fingers, damage to right pointer finger, left middle finger and left thumb, and bleeding lacerated right lower leg.

32. Plaintiff today suffers from arthritis in his right pointer finger and left thumb, as told by doctor, due to the brutal assault & battery he suffered on March 6th 2008 by the aforementioned Defendant Correction Officers.

33. Instead of providing medical attention to Plaintiff in M.H.U.-Q.B.J. for his numerous, Correction Officer, inflicted injuries, they offered him psychiatric medication, which he refused.

34. On March 12th, 2008, after laying up in a strip cell - M.H.U. - O.B.S. - all busted up and bleeding, for 6 days with no medical attention, a Sergeant brought Plaintiff all new state clothes and boots, and said, "If anybody asks, just tell 'em you're on the draft."

35. On March 12th, 2008, they took Plaintiff to Central New York Psychiatric Center (C.N.Y.P.C.), who also took photographs of his numerous, now visible injuries.

36. C.N.Y.P.C. refuses to release these March 12th, 2008 photographs, claiming they aren't available via a F.O.I.L. request, and are for quality care purposes only.

37. Despite Plaintiff's requests to see a medical doctor, C.N.Y.P.C. never provided such.

38. Shortly before April 16th, 2008, Plaintiff

was interviewed by someone from the Inspector General's Office, concerning the events

on March 5th and 6th of 2008, who got him

transferred to Green Haven Correctional

Facility on April 16th, 2008.

39. Plaintiff was served with 4 misbehavior

reports on April 23rd, 2008 at Green Haven

Correctional Facility for the incidents that

occurred at Great Meadow Correctional Fac-

ility on March 5th, and 6th of 2008, 3 of which

were dropped by Great Meadow, and 1 of

which was dismissed at Green Haven at a Superintendant's Tier III hearing.

F. CAUSES OF ACTION

FIRST CAUSE OF ACTION

1. On March 5th, 2008, at approximately 8:50 am,

Defendant Correction Officer's J. Pruijksma

and Rozell violated Plaintiff's 8th Amend-

ment Rights of the United States Constitution.

2. After Defendant Correction Officer Rozell

told Plaintiff to put his hands on the wall

for a pat frisk, a violent, unprovoked, attack,

assault & battery commenced against Plaintiff

by Defendant's Pruijksma and Rozell. Plaintiff

never struck either of these 2 Defendants.

3. Both Defendant Correction Officer's J. Pruit-

ikoma and Rozell repeatedly pounded Plaintiff

with their fists, causing bodily injury, and then

threw him to the floor.

4. Once Plaintiff was on the floor, Defendant

Correction Officer's J. Pruitkoma and Rozell

repeatedly kicked Plaintiff, causing additional

bodily harm, clearly violating his 8th Amendment

Rights.

5. After being repeatedly assaulted for approx-

imately 5 minutes, Plaintiff was handcuffed, and

taken to the facility hospital where he was

examined by a nurse, photographed, then escorted

to S.H.V. - B-1-36 cell.

b. This plan to do Plaintiff serious bodily harm was a premeditated act, as pointed out in the FACTS section of this complaint.

SECOND CAUSE OF ACTION

1. On March 6th 2008 at approximately 11:13 a.m., Defendant Correction Officer's Timothy Brockway, Jeremy Burch, Ray Tilley, Eric Mead, Donald Smith and Correction Sergeant R. Vladyka violated Plaintiff's 8th Amendment Rights of the United States Constitution while he housed in S.H.V. - B-1-36 cell.

2. At approximately 11:13 a.m., March 6th 2008, a

gas-masked man-Defendant Correction Officer

Timothy Brockway sprayed a chemical agent at Plaintiff in his cell, causing him to choke, and causing pain and tearing to his eyes.

3. Plaintiff was sprayed with these poisonous chemicals 5 times over a 15 minute period, without provocation on his behalf, clearly violating his 8th Amendment Rights.

4. At approximately 11:30 am., March 6th, 2008, Plaintiff's cell opened and Defendant Correction Officer Jeremy Burch stormed in and slammed against Plaintiff with a plastic cell shield apparatus.

5. Followed by Defendant Burch, were Defendant Correction Officers Ray Tilley, Eric Mead, and

Donald Smith, who were all in B-1-36 cell along with Plaintiff at the same time.

6. All four of these Defendant Correction Officers beat Plaintiff repeatedly with their fists for approximately 10 minutes as Plaintiff defended himself.

7. This brutal attack upon Plaintiff was completely unprovoked and unwarranted, and was done solely to cause Plaintiff extreme bodily harm, a clear violation of his 8th Amendment Rights.

8. Defendant Correction Sergeant R. Vladyska authorized, observed, allowed, and condoned this brutal beating upon Plaintiff, and did nothing

to intervene and prevent this extreme physical abuse, a clear violation of Plaintiff's 8th Amendment Rights.

THIRD CAUSE OF ACTION

1. Plaintiff was eventually handcuffed, shackled and then run, like a run away freight train, all the way from S.H.U.-B-1-36 cell to the Mental Health Unit - Observation (M.H.U.-O.B.S.)

2. During the trip from B-1-36 to M.H.U.-O.B.S., Plaintiff's 8th Amendment Rights of the United States Constitution were violated by Defendant Correction Officers Burch, Smith and Tilley - the escort officers.

3. While Plaintiff was run from S.H.V.-F-1-36

to M.H.V.-O.B.S. he was also run into walls.

4. It was difficult for Plaintiff to keep his

feet up and moving with the pace of the

escorting officer's, who were Defendant Corr-
ection Officer's Burch, Smith, and Tilley, due

to Plaintiff being tightly shackled, with

the shackles cutting into his ankles.

5. Plaintiff's ankles were bleeding, and he has

permanent scars on both, due to the shackles

being tightly applied, and the scary, traumatic

manner in which he was run from S.H.V.-F-

-36 cell to M.H.V.-O.B.S., a clear violation

of Plaintiff's 8th Amendment Rights.

b. Photograph's were again taken of Plaintiff's numerous, Correction Officer inflicted injuries, in M.H.V.-O.B.S., and Plaintiff was given a shower.

8. PRAYER FOR RELIEF

Plaintiff, for the foregoing reasons set forth in this complaint, request the Court not to allow Defendant's to escape liability for their knowing, willful, and deliberate violations of Plaintiff's Constitutional rights, and to pay to Plaintiff punitive and compensatory damages in the following amounts.

WHEREFORE, Plaintiff requests that
this Court grant the following relief:

a.) Compensatory damages against each

Defendant named herein, individually, in the
amount of \$ 10,000.00^f.

b.) Punitive damages against each Def-

endant named herein, individually, in the am-
ount of \$ 10,000.00^f, for a total award
of \$ 160,000.00^f.

I declare under penalty of perjury
that the foregoing is true and correct.

DATED: 2/3/11

Josef Nisch Fischl
Signature of Plaintiff